



Billing Code: 6560-50

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**EPA-R08-OAR-2013-0474; FRL-9905-25-Region 8**

**Approval and Promulgation of Air Quality Implementation Plans;  
Utah; Revisions to Utah Administrative Code and an Associated Plan Revision.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Utah on September 20, 1999. The September 20, 1999 submittal revised the numbering and format of the Utah Administrative Code (UAC) rules within Utah's SIP. In this action, EPA is acting on those rules from the September 20, 1999 submittal that still require EPA action. Specifically, EPA is approving R307-110-16, "Section IX, Control Measures for Area and Point Sources, Part G, Fluoride," and disapproving R307-110-29, "Section XXI, Diesel Inspection and Maintenance Program." In conjunction with our disapproval of R307-110-29, we are also disapproving the Utah Diesel Inspection and Maintenance Program, which Utah submitted as a revision to the SIP on February 6, 1996, and which was incorporated by reference in R307-110-29 as part of the September 20, 1999 submittal. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective [insert date 30 days after publication in the **FEDERAL REGISTER**].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-

OAR-2013-0474. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7814, or [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials PM<sub>10</sub> mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- (iv) The initials PM<sub>2.5</sub> mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
- (v) The initials SIP mean or refer to State Implementation Plan.
- (vi) The words State or Utah mean the State of Utah, unless the context indicates otherwise.
- (vii) The initials UAC mean or refer to the Utah Administrative Code.

## **I. Background**

Utah's September 20, 1999 submittal revised the numbering and format of the UAC rules within Utah's SIP. The purpose was to provide for a more consistent numbering system and a coherent structure allowing provisions to be located more easily within Utah's rules.

On February 14, 2006 (71 FR 7679), we approved many of the re-numbered rules from the September 20, 1999 submittal, but we deferred action on others or explained why no action on the rules was necessary.<sup>1</sup> In subsequent rulemaking actions, we acted on other rules from the September 20, 1999 submittal, or on later versions of the rules that superseded the version submitted on September 20, 1999.

On August 14, 2013, we proposed to act on those rules from the September 20, 1999 submittal that still required EPA action. See 78 FR 49400. Specifically, we proposed to approve R307-110-16, "Section IX, Control Measures for Area and Point Sources, Part G, Fluoride," and we proposed to disapprove R307-110-29, "Section XXI, Diesel Inspection and Maintenance

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<sup>1</sup> On April 18, 2007 (74 FR 19383), EPA issued a correction notice that corrected certain aspects of the regulatory text in EPA's February 14, 2006 action.

Program.” In conjunction with our proposed disapproval of R307-110-29, we also proposed to disapprove the Utah Diesel Inspection and Maintenance Program (Section XXI of the Utah SIP), which Utah submitted to EPA as a SIP revision on February 6, 1996 and which R307-110-29 of the September 20, 1999 submittal incorporated by reference.

Our August 14, 2013 notice of proposed rulemaking invited comment on our proposal and provided a 30-day comment period. The comment period ended on September 13, 2013. We received no comments. Accordingly, we are finalizing our actions as proposed.

In the docket for this final rule we have included a table that lists the rules from the September 20, 1999 submittal that are not addressed by today’s action and explains why no action on such rules is required.

## **II. What Action is EPA Finalizing and Why?**

### **A. R307-110-16, “Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.”**

We are approving the renumbering of R307-110-16, “Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.” This provision incorporates by reference Utah SIP Section IX, Part G, as amended by the Utah Air Quality Board on December 18, 1992, into the UAC.

In our October 13, 2005 proposed rule on Utah’s September 20, 1999 submittal (70 FR 59681), we did not propose to act on the renumbering of R307-110-16. As our reason, we stated: “Utah repealed this rule from the federally approved SIP in their June 17, 1998 SIP submittal that EPA approved on May 20, 2002 (67 FR 35442).” (70 FR 59687) That statement was incorrect. The May 20, 2002 action did not remove R307-110-16 (under its previous numbering) or associated Utah SIP section IX, Part G from the SIP. Instead, that action removed R307-1-

4.11, “Regulation for the Control of Fluorides from Existing Plants” from the SIP, in part based on the dismantling of the only facility to which the provision applied. In fact, on June 25, 2003 (68 FR 37744), we approved the renumbering of Utah SIP Section IX, Part G, and this section remains in the SIP. However, we have not acted on the corresponding renumbering of R307-110-16 in the September 20, 1999 submittal. As R307-110-16 merely incorporates by reference SIP Section IX, Part G, which itself is currently in the SIP, we are approving the renumbering of R307-110-16.

B. R307-110-29, “Section XXI, Diesel Inspection and Maintenance Program.”

We are disapproving R307-110-29, “Section XXI, Diesel Inspection and Maintenance Program.” R307-110-29 incorporated by reference the Utah Diesel Inspection and Maintenance Program (Section XXI of the SIP), as adopted by the Utah Air Quality Board on July 12, 1995 (and submitted to EPA on February 6, 1996), which we have not acted on previously. In our October 13, 2005 notice of proposed rulemaking (70 FR 59681), we stated that we would not act to approve R307-110-29 because the rule incorporated by reference Utah’s February 6, 1996 SIP submittal. We noted that we would address the February 6, 1996 SIP submittal at a later date (70 FR 59687). We restated our intentions in our final rule of February 14, 2006 (71 FR 7679) in which we noted that we would act on R307-110-29 when we acted on Utah’s February 6, 1996 SIP submittal (71 FR 7681). With this final rule, we are disapproving the State’s February 6, 1996 submittal of its Diesel Inspection and Maintenance Program (see section II.C. below). Therefore, EPA is also disapproving R307-110-29 because it incorporates by reference the State’s Diesel Inspection and Maintenance Program that we are disapproving.

C. Utah SIP Revision: Section XXI, “Diesel Inspection and Maintenance Program.”

We are disapproving Utah’s Diesel Inspection and Maintenance (I/M) Program contained

in Section XXI of the Utah SIP, which Utah submitted on February 6, 1996 (hereafter, the “I/M Program”). The Program requires the inspection of diesel-powered vehicles by means of an emissions opacity test. The opacity of vehicle emissions is measured, using what is known as a snap-idle opacity test, to determine the need for vehicle repair and maintenance. Utah adopted the Program with the goal of reducing particulate emissions from diesel vehicles in the  $PM_{10}$ <sup>2</sup> nonattainment areas along the Wasatch Front – namely, Davis, Salt Lake, and Utah Counties.

Our disapproval is based on several issues. First, relevant literature and studies indicate that there is not an accepted correlation between opacity and particulate matter mass emissions in diesel vehicles. Given this lack of correlation between opacity and PM mass emissions, it is unlikely that the snap-opacity test is a good predictor of PM emissions, and the State has not provided data to support a different conclusion. Second, the Governor’s February 6, 1996 submittal of the Program did not specify a number of critical parameters, such as the relevant opacity limits or specifications for test equipment. While many of the missing parameters were included in revisions to Davis, Salt Lake, and Utah Counties’ inspection and maintenance ordinances that the Utah Division of Air Quality forwarded to us on April 12, 2006, the State did not amend Section XXI of the SIP to include the revised ordinances, and the Governor did not submit such an amendment to us to replace the version submitted on February 6, 1996. Therefore, the Program as submitted is not enforceable as a practical matter. Finally, relevant literature and studies suggest that adjusting diesel vehicles to reduce the opacity of emissions may result in an increase in emissions of nitrogen oxides ( $NO_x$ ), which are precursors to the formation of  $PM_{2.5}$ ,<sup>3</sup>  $PM_{10}$ , and ground level ozone. It is possible, therefore, that repairing vehicles to meet the opacity test could exacerbate PM emissions in Utah, and the State has not

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<sup>2</sup> Particulate matter with an aerodynamic diameter less than or equal to 10 microns ( $PM_{10}$ ).

<sup>3</sup> Particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ( $PM_{2.5}$ ).

provided data to contradict this possibility. We note that on November 13, 2009, Davis, Salt Lake, and Utah Counties were designated nonattainment for the 2006 24-hour  $PM_{2.5}$  NAAQS (74 FR 58688). Also, both Salt Lake and Utah Counties retain their original legal designation of nonattainment for  $PM_{10}$ .

We are unable to conclude that approval of the I/M Program would strengthen the SIP or would be consistent with the requirements of CAA section 110(l). Section 110(l) states that a SIP revision cannot be federally-approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The potential increase in  $NO_x$  emissions from the I/M Program could interfere with attainment or reasonable further progress towards attainment of the  $PM_{2.5}$  NAAQS in the relevant counties. We have no conclusive data to show that the potential benefits of the I/M Program outweigh the potential emission increases with respect to pollutants of concern. Furthermore, the State has not provided data that would support the benefits it ascribes to the I/M Program. Instead, it references a 1988 study that attempts to indirectly infer a level of emission reductions resulting from fixing a statistically insignificant number of old-technology diesel vehicles to reduce exhaust opacity, but without conducting the type of before-and-after-repair mass-emission transient testing on the contemporary fleet of diesel vehicles needed to actually quantify any potential impacts on emissions.

For the foregoing reasons, we are disapproving Section XXI of the SIP, “Diesel Inspection and Maintenance Program,” as submitted by the State on February 6, 1996.

### **III. Statutory and Executive Orders Review**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that

complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law that meets federal requirements and disapproves state law that does not meet federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);



- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action

for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq*

Dated: December 19, 2013.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart TT - Utah**

2. Amend § 52.2320 by adding paragraph (c)(77) to read as follows:

#### **§ 52.2320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(77) On February 6, 1996, Utah submitted as a revision to its State Implementation Plan (SIP) a “Diesel Inspection and Maintenance Program,” Section XXI of the Utah SIP. EPA is disapproving the Utah Diesel Inspection and Maintenance Program as submitted on February 6, 1996. On September 20, 1999 the State of Utah submitted revisions to its SIP that revised the numbering and format of the Utah Administrative Code rules within Utah’s SIP. From the September 20, 1999 submittal, EPA is approving R307-110-16, “Section IX, Control Measures for Area and Point Sources, Part G, Fluoride,” and disapproving R307-110-29, “Section XXI, Diesel Inspection and Maintenance Program,” which incorporated Utah’s Diesel Inspection and Maintenance Program by reference into Utah’s rules. EPA has previously acted on other provisions from the September 20, 1999 submittal.

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code, Environmental Quality, Air Quality, R307-110, General Requirements: State Implementation Plan, R307-110-16, Section IX, Control Measures for Area and Point Sources, Part G, Fluoride; effective September 15, 1998; as published in the Utah State Bulletin on June 1, 1998 and October 1, 1998.

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[FR Doc. 2014-04336 Filed 02/27/2014 at 8:45 am; Publication Date: 02/28/2014]